

NOTICE OF PROPOSED RULEMAKING

Editor's Note: The following Notice of Proposed Rulemaking is reprinted. It was originally published at 10 A.A.R. 3257, August 20, 2004. In the original printing, R18-5-104(A) and R18-5-109(A) and (B) were inadvertently shown as stricken text. In this reprint, the errors have been corrected and the language is not indicated as stricken text.

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION**

PREAMBLE

- 1. Sections Affected**

Article 1	<u>Rulemaking Action</u>
R18-5-101	Amend
R18-5-104	Amend
R18-5-107	Amend
R18-5-109	Amend
R18-5-115	Amend

- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statute the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 49-104, 49-202, 49-203, 49-351, 49-352, 49-353 and 49-361
Implementing statute: A.R.S. §§ 49-352, 49-361

- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 1319, April 2, 2004

- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Jon Fiegen or Sean McCabe
Address:	Arizona Department of Environmental Quality 1110 W. Washington St. (MC 5415B-2) Phoenix, AZ 85007
Telephone:	Jon Fiegen (602) 771-4596 Sean McCabe: (602) 771-4600 (Toll-free number in Arizona: (800) 234-5677)
Fax:	(602) 771-4634
E-mail:	fiegen.jon@azdeq.gov mccabe.sean@azdeq.gov

- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
 - A. Background for Proposed Rules**

The primary rationale for this rulemaking is to improve the operator certification program administered by the Arizona Department of Environmental Quality (ADEQ), which certifies operators of drinking water and wastewater facilities. The requirements relating to the certification of public water system operators come primarily from the federal Safe Drinking Water Act (SDWA), which seeks to ensure that drinking water supplied to consumers by public water systems is safe to drink, that consumers are confident that their water is safe to drink and that certified operators operate public water systems. The Environmental Protection Agency (EPA) promulgated final guidelines for the certification and recertification of water system operators in February 1999. 64 FR 5916 through 5921, February 5, 1999.

Currently, ADEQ is able to revoke the certificate of an operator of a wastewater or water facility for noncompliance pursuant to A.A.C. R18-5-109. A proposed amendment to these rules will allow ADEQ also to place an operator on probation or suspension for noncompliance pursuant to A.A.C. R18-5-109, among other changes.
 - B. Section-by-section Explanation of the Rules**

R18-5-101 sets forth definitions for this Article.

R18-5-104 sets forth general requirements for the operation of water and wastewater facilities and specific requirements for the owners and operators of water and wastewater facilities.

Notices of Proposed Rulemaking

R18-5-107 sets forth the requirements for certificate renewal for operators of water and wastewater facilities.

R18-5-109 sets forth the enforcement mechanisms the Department may employ with operators of water and wastewater facilities. R18-5-115 sets forth the criteria for classifying the grades of water treatment and water distribution facilities.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The proposed amendments do not diminish a previous grant of authority of a political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact:

A. Identification of Rule

Title 18, Chapter 5, Article 1, "Classification of Treatment Plants and Certification of Operators."

B. Background and Summary

Arizona has a Safe Drinking Water program approved by the EPA that governs drinking water, public water systems and operators of public water systems. ADEQ also regulates wastewater facilities and wastewater facility operators. Currently, ADEQ may only revoke the certificate of an operator for noncompliance. Possessing only operator certificate revocation creates a program with a "one-size-fits-all" enforcement mechanism. The expanded enforcement mechanism proposed by this rulemaking will provide ADEQ with greater flexibility and an increased ability to take corrective actions with water and wastewater facility operators that are appropriate to the violations committed.

Additionally, EPA calls upon states with an approved drinking water program to have the ability to suspend a public water system operator's certificate for noncompliance, or take other appropriate enforcement measures. Since EPA calls upon states with an approved drinking water program to have this ability, the adoption of suspension and probation as additional enforcement measures will assist ADEQ in maintaining its approval from EPA to implement the Safe Drinking Water Act in Arizona. The adoption of suspension and probation as additional enforcement measures to address noncompliance by operators of wastewater facilities will also assist ADEQ in protecting the public health, safety and the environment.

This proposed rulemaking makes changes to five of the sixteen sections comprising Article 1. ADEQ believes that the results of these changes will represent cost-saving benefits in terms of improved protection to public health and safety. For example, the marginal costs to owners of water and wastewater facilities from replacing the services of an operator placed on suspension are expected to be less than the potential value of marginal benefits to consumers and general public.

The current rule allows ADEQ to deny or revoke an operator certificate. If, however, these proposed rule changes are implemented, ADEQ will be able to suspend a certificate or place an operator on probation for violating provisions of these rules (see R18-5-109). Potentially, these additional enforcement mechanisms can provide better protection of the public health and the environment. This is vital to Arizona's program since the primary purpose of the Safe Drinking Water Act is to ensure that drinking water supplied to consumers by public water systems is safe to drink. ADEQ must also have this same enforcement authority for wastewater facility operators for the protection of public health and the environment.

Although potential costs and benefits are described in part "D" below, ADEQ anticipates the incremental cost to implement this rule probably will be minimal. ADEQ solicits additional information on entities impacted and potential costs and benefits. Information and data received during the oral proceeding will be evaluated and included, as appropriate, in the final rulemaking.

C. Entities Directly Impacted

Entities that could be directly affected bear costs, or directly benefit from this rule include: owners of water facilities and wastewater facilities, operators, ADEQ, and the public. Water and wastewater facilities include private and public owners. The federal government, state agencies, various political subdivisions of the state and private entities own and operate these facilities and could be impacted by this rulemaking. The public includes consumers and citizens at large.

ADEQ does not anticipate an impact to other state agencies or to the state General Fund.

D. Potential Costs and Benefits

Owners of Facilities. The potential for increased operating costs for owners of water facilities and wastewater facilities may arise for facilities that would find it necessary to replace the services of an operator who has been suspended. A facility faced with the necessity of finding replacement services for a suspended operator may encounter increased

Notices of Proposed Rulemaking

transaction costs to find a replacement operator. In addition, the cost for a certified operator may or may not be equivalent to prior service costs. However, if transaction costs are minimal and replacement service costs are relatively equivalent to prior costs, the impact should be "minimal." In cases where transaction costs become more expensive and replacement service costs exceed what the facilities were previously paying, the relative impact should be greater.

Even though the potential does exist for higher costs, ADEQ anticipates that significantly higher costs would be the exception rather than the anticipated scenario. Furthermore, relatively larger facilities may not experience any impact in the event of an operator suspension because of multiple operators already employed at those facilities. Finally, the threat of suspension or probation may actually work as an incentive for existing and new operators to perform their job tasks and to operate the facilities in compliance with the law.

Certified operators. Certified operators are persons who hold a current certificate issued by ADEQ. Earning professional development hours (PDHs) for certificate renewals is an existing requirement. Although the rule currently requires an operator to provide PDH records to ADEQ upon request, the requirement to maintain the documentation for at least five years would be a new requirement under these proposed rules. ADEQ views the impact of this new requirement to be minimal. Although the rule provision that authorizes ADEQ to suspend an operator's certificate or place an operator on probation, represents a potential increased risk to these operators, the outcome, including improved operator performance, may be viewed as a positive and beneficial one.

ADEQ. In addition to the minimal rule development costs incidental to the rulemaking process, ADEQ does not anticipate the need for additional employees, equipment, or other explicit and implicit costs to accrue as a result of implementing this rulemaking. Even though the ability to suspend an operator's certificate or place an operator on probation would fall under a category of increased enforcement costs, ADEQ does not anticipate a significant increase in enforcement costs.

ADEQ expects that the implementation of these proposed rule changes will strengthen the program that certifies and regulates the operators of water and wastewater facilities. Drinking water that is safe to drink is of critical importance to everyone. The proper operation of public water systems that deliver water to consumers is a vital step in maintaining safe drinking water. Similarly, it is important to public health and safety and the environment that wastewater is adequately treated through the proper operation of wastewater facilities. The adoption of suspension and probation as additional enforcement mechanisms for wastewater and water facility operators will improve ADEQ's oversight over these programs and will assist ADEQ in maintaining its approval from EPA to implement the Safe Drinking Water Act in the state.

Consumers and general public. Initially, this rulemaking is not expected to generate costs to consumers or to the general public. However, the potential does exist for owners/operators to pass on increased compliance costs to consumers. ADEQ expects probable benefits to outweigh probable costs because of the potential for increased public protection. In some cases, the potential exists for cost-avoidance benefits to facilities due to improving the operation of systems and mitigating the potential for facilities being out of compliance. Thus, this rulemaking can be viewed as a direct link to improving the well-being of consumers and the general public.

E. Rule Impact Reduction on Small Businesses

State law requires agencies to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives of the rulemaking. ADEQ considered each of the methods prescribed in A.R.S. §§ 41-1035 and 41-1055(B)(5)(c) for reducing the impact on small businesses. Methods that may be used include the following: (1) Exempt them from any or all rule requirements, (2) Establish performance standards which would replace any design or operational standards, or (3) Institute reduced compliance or reporting requirements. An agency may accomplish the 3rd method by establishing less stringent requirements, consolidating or simplifying them, or setting less stringent schedules or deadlines.

After assessing the various methods for reducing the impact on small businesses, ADEQ has been unable to implement any of the suggested methods. Owners and operators of these facilities must meet these rules to maintain an adequate and appropriate Safe Drinking Water program and wastewater program in Arizona.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

A person may submit written comments to the individuals listed in item #4.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: October 5, 2004
Time: 1:30 p.m.
Location: Department of Environmental Quality
1110 W. Washington, Room 250
Phoenix, AZ 85007

(Please call 602-771-4795 for special accommodations pursuant to the Americans with Disabilities Act.)

Notices of Proposed Rulemaking

The public record on the proposed rulemaking will close at 5:00 p.m., October 7, 2004. Oral comments may be made at the proceeding referenced above; written comments must be received by the close of record date. Address written comments to one of the individuals identified in item #4.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

NOTICE OF PROPOSED RULEMAKING

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**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION**

**ARTICLE 1. CLASSIFICATION OF ~~TREATMENT PLANTS~~ WATER AND WASTEWATER FACILITIES AND
CERTIFICATION OF OPERATORS**

Section

- R18-5-101. Definitions
- R18-5-104. General Requirements
- R18-5-107. Certificate Renewal
- R18-5-109. Denial, Suspension, Probation and Revocation
- R18-5-115. Grades of Water Treatment Plants and Distribution Systems

**ARTICLE 1. CLASSIFICATION OF ~~TREATMENT PLANTS~~ WATER AND WASTEWATER FACILITIES AND
CERTIFICATION OF OPERATORS**

R18-5-101. Definitions

The terms in this Article have the following meanings:

“Certified operator” or “operator” means an individual who holds a current certificate issued by the Department in the field of water or wastewater treatment, water distribution, or wastewater collection, ~~and is responsible for the daily onsite operation or the remote operation from a central location of all or a part of a facility.~~

“Collection system” means a pipeline or conduit, a pumping station, a force main, or any other device or appurtenance used to collect and conduct wastewater to a central point for treatment and disposal.

“Department” means the Department of Environmental Quality or its designated representative.

“Director” means the Director of the Department of Environmental Quality or the Director’s designated representative.

“Direct responsible charge” means day-to-day decision making responsibility for a facility or a major portion of a facility.

“Distribution system” means a pipeline, appurtenance, or device of a public water system that conducts water from a water source or treatment plant to consumers for domestic or potable use.

“Facility” means a water treatment plant, wastewater treatment plant, distribution system, or collection system.

“Industrial waste” means the liquid, gaseous, or solid waste produced at an industrial operation.

“Onsite operator” means an operator who visits a facility at least daily to ensure that it is operating properly.

“Onsite representative” means a person located at a facility who monitors the daily operation at the facility and maintains contact with the remote operator regarding the facility.

“Operator” has the same meaning as certified operator, defined in this Section.

“PDH” means professional development hour, defined in this Section.

“Population equivalent” means the population that would contribute an equal amount of biochemical oxygen demand (BOD) computed on the basis of 0.17 pounds of five-day, 20-degree centigrade BOD per capita per day.

“Professional development hour” or “PDH” means one hour of participation in an organized educational activity related to engineering, biological or chemical sciences, a closely related technical or scientific discipline, or operations management.

“Public water system” has the same meaning prescribed in A.R.S. § 49-352.

“Qualifying discipline” means engineering, biology, chemistry, or a closely related technical or scientific discipline.

“Qualifying experience” means experience, skill, or knowledge obtained through prior employment that is applicable to the technical or operational control of all or part of a facility.

“Remote operator” means an operator who is not an onsite operator.

Notices of Proposed Rulemaking

“Validated examination” means an examination that is approved by the Department after being reviewed to ensure that the examination is based on the class and grade of a system or facility.

“Wastewater” means sewage, industrial waste, and all other waterborne waste that may pollute any lands or waters of the state.

“Wastewater treatment plant” means a process, device, or structure used to treat or stabilize wastewater or industrial waste and dispose of the effluent.

“Water treatment plant” means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system.

R18-5-104. General Requirements

- A. A facility owner shall ensure that at all times:
1. A facility has an operator in direct responsible charge who is certified for the class of the facility and at or above the grade of the facility.
 - 1.2. ~~Only a certified operator can make a decision~~ An operator makes all decisions about process control or system integrity regarding water quality or water quantity that affects public health; however, an administrator who is not a certified operator can make a planning decision regarding water quality or water quantity as long as the decision is not a direct operational process control or system integrity decision that affects public health.
 2. ~~The operator in direct responsible charge of the facility is certified for the class of facility at which the operator works, and at or above the grade of the facility for which the operator works;~~
 3. An operator who is in direct responsible charge of more than one facility is certified for the class of each facility and at or above the grade of the facility with the highest grade;
 4. An operator who replaces the operator in direct responsible charge does not begin operation of the facility before being certified for the applicable class and grade of the facility;
 5. In the absence of the operator in direct responsible charge, the operator in charge of the facility is certified for the applicable class of facility and at a grade no lower than one grade below the grade of the facility; and
 6. The names of all current operators are on file with the Department.
- B. If the owner of a facility replaces an operator in direct responsible charge with another operator, the facility owner shall notify the Department in writing within ten days of the replacement.
- C. The operator shall notify the Department in writing within ten days of the date the operator either ceases operation of a facility or commences operation of another facility.
- D. ~~A facility owner shall ensure that an operator holding certification in a particular class and grade only operates a facility of the same class and the same or lower grade for which the operator is certified.~~ An operator shall operate each facility in compliance with applicable state and federal law.
- E. A facility owner shall ensure that a Grade 3 or Grade 4 facility has an onsite operator.
- E. An operator holding certification in a particular class and grade may operate one or more Grade 1 or Grade 2 facilities as a remote operator if the facility owner ensures that the following requirements are met:
1. The remote operator is certified for the class of each facility and at or above the ~~class and~~ grade of each facility operated by the remote operator.
 2. There is an onsite representative on the premises of each Grade 1 or Grade 2 facility, except for a Grade 1 water distribution system that serves fewer than 100 people, which is not required to have an onsite representative if the conditions of ~~(E)(8)~~ (F)(8) are met. The onsite representative is not required to be an operator if the facility has a remote operator who is certified at or above the grade of the facility.
 3. The remote operator instructs, supervises and provides written instructions to the onsite representative in the proper operation and maintenance of each facility, ~~providing written instructions; and ensuring~~ ensures that adequate records are kept.
 4. The remote operator provides the onsite representative with a telephone number at which the remote operator can be reached at all times. If the remote operator is not available for any reason, the remote operator shall provide the onsite representative with the name and telephone number of a qualified substitute operator who will be available while the remote operator is not available.
 5. The remote operator resides no more than 200 miles by ground travel from any facility that the remote operator serves.
 6. The remote operator operates each facility in compliance with applicable state and federal laws.
 7. The remote operator inspects a facility as often as necessary to ~~assure~~ ensure proper operation and ~~maintenance~~, but in no case less than:
 - a. Monthly for a Grade 1 or Grade 2 water treatment plant or distribution system that produces and distributes groundwater;
 - b. Monthly for a Grade 1 wastewater treatment plant;
 - c. Twice a month for a collection system that serves fewer than 2,500 people; and
 - d. Weekly for a Grade 2 wastewater treatment plant or collection system that serves fewer than 1,000 people.

Notices of Proposed Rulemaking

8. For a Grade 1 water distribution system that does not have an onsite representative and serves fewer than 100 people, the following conditions are met:
 - a. The name and telephone number at which the remote operator can be reached is posted at the facility, enclosed with water bills, or otherwise made readily available to water users. If the remote operator is not available for any reason, the remote operator shall post at the facility the name and telephone number of a substitute operator of the applicable facility class and grade who will be available while the remote operator is not available.
 - b. The remote operator or substitute operator resides no more than 200 miles by ground travel from the facility; and
 - c. The remote operator inspects the facility weekly.

R18-5-107. Certificate Renewal

- A. If the Department renews a certificate, the certificate is renewed for three years, unless the operator requests a shorter renewal period in writing.
- B. To renew a certificate, an operator shall maintain documentation and provide it to the Department upon request to verify completion of at least 30 PDHs accumulated during a certification period. The operator shall provide documentation of PDHs that is in a format acceptable to the Department. At least 10 of the PDHs shall directly relate to the specific job functions of the operator. If an operator holds multiple certificates, the required PDHs may be applied to all certificates if the PDHs are acquired within that certification period. The operator's supervisor or the entity that provides the education or training shall verify completion of each PDH in writing. An operator shall maintain documentation of completion of PDHs for a minimum of five years.
- C. As an alternative to the requirements of subsection (B), an operator may renew a certificate by taking and passing an examination for the applicable class and grade.

R18-5-109. Denial, Suspension, Probation and Revocation

- A. ~~The~~ If the Department decides to deny, suspend, or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with shall act under A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 to deny or revoke a certificate.
- B. If it is In determining whether to revoke or suspend a certificate, or to place an operator on probation, or in determining the length of suspension or probation, the Department shall consider whether the operator:
 1. Operates a facility in a manner that violates federal or state law;
 2. Negligently operates a facility or negligently supervises the operation of ~~the a~~ facility;
 3. Fails to comply with ~~a~~ Department ~~orders~~ order or ~~consent decrees~~ order of a court;
 4. Obtains a certificate by fraud, deceit, or misrepresentation;
 5. Engages in fraud, deceit, or misrepresentation in the operation or supervision of a facility;
 - ~~5-6.~~ Knowingly or negligently prepares a false or fraudulent report or record regarding the operation or ~~management supervision of the a~~ facility; ~~or~~
 - ~~6-7.~~ Endangers the public health, safety, or welfare;
 8. Fails to comply with the terms or conditions of probation or suspension; or
 9. Fails to cooperate with an investigation by the Department.
- C. The Department shall deny certification to an applicant who does not meet the requirements of R18-5-105 or R18-5-110, or who is ineligible for certification pursuant to a Department order or order of a court.
- ~~C-D.~~ In order to be recertified, a person whose certificate is revoked shall reapply and be reexamined as a new applicant. A person whose certificate is revoked is not eligible for admission to a certification examination for 12 months from the effective date of the revocation.
- E. The Department may place an operator on probation to address deficiencies in operator performance. The terms of probation may include completion of additional PDHs, increased reporting of operator activity, limitations on activities the operator may perform, or other conditions.
- F. During the period of suspension or revocation, a person whose certificate is suspended or revoked shall not operate a facility of any class or grade.
- G. A person whose certificate is suspended or revoked shall immediately notify the owner of a facility where the operator is employed of the suspension or revocation.

R18-5-115. Grades of Water Treatment Plants and Distribution Systems

- A. Grading of water treatment plants. This subsection does not apply to a facility that distributes water but does not treat water or to a facility that distributes water and disinfects by chlorine gas or hypochlorite only. The Department shall grade a water treatment plant according to the sum of the points it assigns for each plant characteristic.
 1. No Change
 2. No Change
- B. Grading of water distribution systems. The Department shall grade a distribution system according to the sum of the points it assigns for each system characteristic.
 1. The Department shall assign points for the purpose of grading a distribution system as follows:

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

System Characteristics	Points
Population	1 per 5,000
Maximum Design Capacity	1 per Millions of Gallons per Day up to 10
Pressure Zones	5
Booster Stations	5
Storage Tanks	3
Blending	5
<u>Fire Protection Systems/Testable Backflow Prevention Assemblies</u>	5
Cathodic Protection	3
Control System Technologies	2
Chlorine Gas	6
Hypochlorite Liquid	2
Hypochlorite Solid	2
Chloramine	9
Chlorine Dioxide	9

- 2. No Change
 - a. No Change
 - b. No Change
 - c. No Change
 - d. No Change
- 3. No Change